IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 6844 of 2005

Between:

Boyina Nana Rao, S/o. Late Sreeramulu,
R/o. Kotabommali Village and Mandal, Srikakulam District.

..... PETITIONER

AND

1 A.P. State Finance Corporation,

having its Head Office at P.B.No.165,
D.No. 5-9-194, Chirag-Ali-Lane, Hyderabad

rep. by its General Manager.
2 The A.P. State Finance Corporation,

P.B.No.7, D.No.4-1-139/1, palakonda Raod,
Srikakulam Branch, Srikakulam,

rep. by its Senior branch Manager.
3 J. Manmadha Rao, s/o. Tavudu,
Main Road, Tekkali, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ of Mandamus or any other appropriate writ or direction declaring action of the 2nd respondent in invoking section 29 of SFC Act and conducting auction of the petitioner's property in Sy.N.89/4 and 89/5A of Tarlipeta Village, Kotabommali Mandal, Srikakulam District as illegal, arbitrary, and one not authorized by law.

Counsel for the Petitioner :Mr.O.MANOHER REDDY

Counsel for the Respondents No.1 and 2: MR.Y.N.LOHITA

Counsel for the Respondents No.3: Mr.V.L.N.G.K.MURTHY

The Court at the stage of admission made the following :

ORDER:

This writ petition is filed by the petitioner who is a guarantor for the loan borrowed by one B. Eswara Rao for establishment of an industrial unit under the name and style of M/s. Annapurna Modern Rice Mill, Tarlipeta village, Kotabommali Mandal, Srikakulam District, seeking to declare the action of the 2nd respondent in invoking section 29 of State Financial Corporations Act, 1951(for brevity 'the Act') and conducting auction of the petitioner's property in Sy.N.89/4 and 89/5A of Tarlipeta Village, Kotabommali Mandal, Srikakulam District as illegal and arbitrary.

According to the petitioner, the respondent-A.P.State Financial Corporation invoked the provisions of Section 29 of the Act and disposed of even the securities furnished by the petitioner who is a third party, even though, the provisions under Section 29 of the Act would not cover such securities furnished by the third parties. Therefore, the learned counsel contends that the action of the respondent by taking recourse to Section 29 of the Act for disposal of the collateral security furnished by the third party is illegal and without jurisdiction and sought to set aside the sale effected by the respondent-Corporation.

However, learned Standing Counsel appearing for the respondent-Corporation sought to rely upon the unreported judgment of a Division Bench of this court in "***D. Narayana Rao and another v. A.P.State Financial Corporation, Ranga Reddy(East) Branch***" in Writ Petition No.403 of 2004 dated 21-06-2005 and contended that as similar issue has already been considered and negatived by the Division Bench. Therefore, there is no merit in this case warranting interference of this Court.

At the time of hearing, however, learned counsel appearing for the petitioner sought to distinguish the judgment by referring to the provisions of Section 29 as well as Section 31 and the definition of the 'Industrial concern' as defined in Section 31(1)(c)

of the Act. According to the learned counsel, Section 29 empowers a corporation to take over the management or possession or both of the industrial concern, incase of default committed by the industrial concern as well as the right to transfer by way of lease or sale and realize the property pledged or leased or hypothecated or assigned to the Corporation and the said words contained in Section 29(1) are applicable only to the properties of the industrial concern and not of the collateral securities of third parties.

Learned counsel also refered to Section 31(1)(a) and contended that the said provision empowers the Corporation to approach the District Judge having the jurisdiction over the industrial concern for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance. Similarly under Section 31 Clause (aa) for enforcing the liability of any surety, but the said reference contained in Section 31(1)(aa) is not there in Section 29. Therefore, with reference to the sureties or guarantors' property is concerned, it is only Section 31, which is applicable, and not Section 29. The learned counsel also contended that the distinction between the provisions of Sections 29, 31 and 32 were not considered by the Division Bench. Therefore, the judgment cannot be taken as a precedent for rejecting the claim of the petitioner.

Heard both sides and considered the material on record. The Division Bench, which heard and disposed of the above writ petition referred by the learned counsel for the Corporation considered the issue as under:

> "Learned Senior Counsel appearing for the petitioners argued at length on the premise that Section 29 of the Act was not available to the respondent Corporation to sell away the property which was offered as collateral security. It may not be necessary to refer to the submissions made by the learned Senior Counsel in view of the fact that what the petitioners executed with the Corporation was, as a matter of fact, a memorandum which states that the title deeds with respect to the house in question would be deposited with the respondent Corporation by way of mortgage. In terms of Section 29 of the Act, any property mortgaged can be sold by the Corporation without taking recourse to either Section 31 or Section 32 of the Act, which is settled law. Since, admittedly, the property of the petitioners stood mortgaged to the respondent Corporation by way of collateral security on behalf of the loanee, we do not find fault with the respondent Corporation in pursuing the remedy available to it under Section 29 of the Act."

In view of the above decision of the Division Bench, which is binding on this Court, this Court cannot reconsider this issue and therefore the claim and contention made by the petitioner's counsel is rejected. In that view of the matter, the writ petition does not deserve any merit for consideration and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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S. ANANDA REDDY, J.

Dated: 19..07..2005.

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To

1 The General Manager,

A.P. State Finance Corporation,

having its Head Office at P.B.No.165,
D.No. 5-9-194, Chirag-Ali-Lane, Hyderabad

2 The Senior branch Manager,

The A.P. State Finance Corporation,

P.B.No.7, D.No.4-1-139/1, Palakonda Road,
Srikakulam Branch, Srikakulam,

3 Two CD copies